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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ANTONIO DIAZ,

Defendant and Appellant.

G039522

(Super. Ct. No. 07CF0015)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE IN
JUDGMENT

It is ordered that the opinion filed herein on January 22, 2009, be modified as follows:

On page 7, second sentence of the first paragraph under the subtitle *Imperfect Self-defense Jury Instruction*, the words “he submitted it” are deleted and replaced with the word “given.” In the same sentence the word “drafted” is deleted and replaced with the word “given.” The sentence will now read as follows:

“Nevertheless, defendant now claims it was error to provide the instruction as given, because the instruction as given supposedly limited the jury’s consideration to threats or harm committed by the victim.”

In the first sentence of the first paragraph on page 8, delete the words “submitted by defendant.”

In the first sentence of the second paragraph on page 8, after the word “argument” insert “by not raising it to the trial court.”

In the first paragraph on page 9, after the last sentence ending with the word “violence,” insert the following sentence: “For the same reason, we reject defendant’s alternative argument that he received ineffective assistance of counsel. (See *Strickland v. Washington* (1984) 466 U.S. 668, 687-688 [claim of ineffective assistance must show prejudice].)”

The petition for rehearing is DENIED.

There is no change in the judgment.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.